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IN THE

Supreme Court of the United States

October Term, 1942.

No. 292

W. H. NEHER,

Petitioner,

vs.

A. E. HARWOOD, individually and as Postmaster of the City of La Verne, California,

Respondent.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

PETITIONER'S REPLY BRIEF.

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It would seem that counsel in their brief in opposition have made incorrect and misleading statements concerning the contents of a writing. [Ex. B of complaint, R. 43.]

The petitioner did not assert in his circular that he had "set up a cosmic field," as stated in respondent's brief at page three. He asserted: "we have *endeavored* to set up a cosmic field * * *." [R. 45.] (Emphasis added.)

Petitioner's circular did not claim "that cures of 99% of all diseases could be affected in this manner." (Resp. Br. p. 4.) He stated in his circular in question and answer form, as alleged in the complaint [R. 22], and as set forth in the findings of fact of the Post Office Department [R. 48], as follows:

> "Q. Will the Cosmic Forces *set in motion through prayer* cure every form of disease or ailment? A. If a Cosmic Field *could be* produced that would be *in perfect harmony with God* that *might be possible*. Under our present setup *perhaps not over 97* percent *will yield* to General Prayer." [R. 57.] (Petitioner's Br. p. 20.) (Emphasis added.)

These differences constitute of course the differences between fraud and no fraud. No statements were made which are sufficient to justify the character of right punishment which was inflicted here.

It would appear that there is no question but that the complaint states a cause of action in that it establishes that the findings of fact of the Post Office Department are not supported by the evidence. This is the reason number three which the appellate court in its opinion erroneously states is "practically the same as (1)." [R. 80.] (Appendix to Petitioner's Br. p. 9.)

The fact is, the complaint contains additional allegations [R. 14 and 33] which make it almost identical with the allegations of the complaint which was involved in the leading case of *American School of Magnetic Healing v. McAnnulty*, 187 U. S. 94, 96, and which this court

expressly held to be sufficient in an opinion which has been cited and approved more than one hundred times.

It would seem also that counsel have misstated the questions involved by ignoring petitioner's Question Number Four (Petitioner's Br. p. 6) and by ignoring the fact that petitioner's complaint states a cause of action also by reason of the additional questions raised by this contention, to wit: that the order made is violative of petitioner's constitutional rights in that:

> "The form of the order and the manner in which it was made is in violation of petitioner's constitutional rights, because: (a) an administrative agency cannot inflict a punishment such as has been inflicted here, and (b) nor can it take a portion of a person's liberty—as distinguished from his property—and inflict such a punishment, in the manner done here, to-wit, at a hearing held three thousand miles from his place of residence, without the presumption of innocence, the right to a jury trial before an impartial judicial tribunal, and the protection of his other civil rights guaranteed by the Fourth, Fifth, Sixth and Eighth Amendments to the Constitution of the United States."

Petitioner is entitled to his day in court to have these questions considered on the merits.

Surely petitioner's contentions and the precise allegations of his complaint should not be glossed over in the manner done in respondent's brief. Counsel completely disregards the fact that petitioner is seeking to avoid a

continuous and degrading punishment, probably in excess of that imposed in any criminal case, and that even the lowest criminal is entitled to his day in court—and a fair statement of his case. The question of whether or not a person has been deprived of one of his most precious liberties in violation of his constitutional rights should not be dealt with in any such loose and callous manner.

We are astonished that counsel do not desire to have the nationally important questions raised heard and disposed of by this court.

Respectfully submitted,

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WALTER H. MALONEY,

Attorneys for Petitioner.